

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of the License
Application of Scandia
LAW
Valley Ambulance Service,
RECOMMENDATION
Cushing, Minnesota

FINDINGS OF FACT,
CONCLUSIONS OF

AND

The above-entitled matter came on for hearing before
Administrative Law
Judge Peter C. Erickson at 7:00 p.m. on October 11, 1993 in the
Scandia Valley
Town Hall, Scandia Valley Township, Minnesota. The record in this
matter
closed on November 8, 1993, the date of receipt of the last post-hearing
submission from the public.

Herb Bloomquist, Secretary of the Scandia Valley First Response Team,
Route 1, Box 258, Motley, Minnesota 56466, appeared on behalf of the
Scandia
Valley Ambulance Service, Applicant herein. There were no
intervenors in this
matter. However, representatives of Murphy Morrison County
Ambulance, Inc.,
appeared and testified in opposition to the application. Approximately 300
residents of the proposed primary service area (PSA) were present at the
hearing in support of the application.

This Report is a recommendation, not a final decision. The
Commissioner
of Health will make the final decision after a review of the record
which may
adopt, reject or modify the Findings of Fact, Conclusions, and
Recommendations
contained herein. Pursuant to Minn. Stat. 14.61, the final
decision of the
Commissioner shall not be made until this Report has been made available to
the parties to the proceeding for at least ten days. An opportunity
must be
afforded to each party adversely affected by this Report to file exceptions
and present argument to the Commissioner. Parties should contact
Mary Jo
O'Brien, Commissioner, Minnesota Department of Health, 717 Delaware Street
Southeast, Minneapolis, Minnesota 55440, to ascertain the procedure
for filing
exceptions or presenting argument.

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether the Applicant's application to provide basic life support (BLS) services in a two-township area of northwestern Morrison County should be granted pursuant to the standards set forth in Minn. Stat. sec. 164.802, subd. 3(g)

Based upon the record here in, the Administrative Law Judge makes the following:

FINDINGS OF FACT

BACKGROUND AND PROCEDURAL HISTORY

1. The Applicant has applied to provide BLS ambulance services in a two-township area (Scandia Valley Township and Rail Prairie Township) located in northwestern Morrison County. Advanced life support (ALS) ambulance services have been and continue to be provided by Murphy Morrison County Ambulance, Inc., whose PSA includes Scandia Valley and Rail Prairie Townships. These townships are in the very northwest portion of the Murphy Morrison PSA. In August of 1991, Murphy Morrison closed its base at Randall, but continued to operate out of its main station in Little Falls. Randall is approximately ten miles from Scandia and Rail Prairie Townships; Little Falls is more than 20 miles from parts of the townships. Scandia Valley provides First Response Team services for Murphy Morrison Ambulance runs into Scandia Valley and Rail Prairie Townships.

2. Subsequent to Murphy Morrison's abandonment of the Randall substation, the response time for ambulance runs out of Little Falls to Scandia Valley and Rail Prairie Townships became significantly longer. Consequently, the Scandia Valley First Response Team, with unanimous support from the residents of the two townships, submitted an application to the Commissioner of Health to provide BLS services to a PSA which includes only Scandia Valley and Rail Prairie Townships. The Applicant readily concedes that if Murphy Morrison were to reopen its Randall substation, the Application now being considered would be withdrawn.

3. On June 23, 1992, the Applicant submitted an Application to the Commissioner of Health requesting licensure as stated above. Amendments to the Application were filed in April, 1993. On September 2, 1993, Commissioner Mary Jo O'Brien issued a Notice of Completed Application and Notice of and Order for Hearing scheduling a public hearing to consider the Application on October 11, 1993 at the Scandia Valley Town Hall. Notice of the hearing was published in the Morrison County record on September 12 and 19, 1993. Additionally, the Notice was published in the September 7, 1993 issue of the State Register. Notice of the hearing was served upon the Morrison County Board of Commissioners; the Community Health Board for Cass, Todd, Wadena and Morrison Counties; the Central Minnesota EMS Council; the Scandia Township Board; the Murphy Morrison County Ambulance Service; and North Ambulance located in Brainerd, Minnesota.

DESCRIPTION OF THE SERVICE

4. The Applicant proposes to provide an all-volunteer, non-profit ambulance service operating out of the Scandia Valley fire department which expects to make approximately 45 BLS runs in the first year if the Application

is granted. The proposed ambulance service will serve a population of approximately 925 year-round residents and approximately 2,500 visitors during the peak summer tourist months. The Applicant estimates annual revenue from operations of \$20,800 and annual non-operating revenue of \$975. The Applicant did not, however, make an estimate of total annual expenses. If the Application is granted, the Applicant will purchase a type 11 ambulance with all of the necessary equipment.

5. The Applicant has mutual aid assistance and backup agreements with North Ambulance located in Brainerd and the Staples Ambulance Service located in Staples, Minnesota. The medical director for the proposed ambulance service is Dr. Randy Peterson, M.D., located in Staples, Minnesota. The United District Hospital located in Staples will be affiliated with the proposed ambulance service.

6. During 1992, the Applicant, who now furnishes First Response Team services for Murphy Morrison in the proposed PSA, had an average response time of three minutes to the scene of the "pick-up". The Murphy Morrison average response time was 23 minutes, sometimes with the help of the First Response Team to direct it to the site. During the first half of 1993, the First Response Team had an average response time of four minutes and Murphy Morrison averaged a response time of 25 minutes. The Applicant estimates that from its proposed base station in Scandia Valley Township, its maximum response time to the most distant point within the PSA would be 18 minutes and the average response time would be ten minutes. The maximum distance from the Applicant's base of operations to the farthest point in the PSA is 11 miles.

RELATIONSHIP TO COMMUNITY HEALTH-PLAN

7. The Morrison County Community Health Services Plan states that "there is a lack of financial support for accessible emergency medical services." A stated goal is "to assure coordinated emergency medical services that provide access to timely intervention of life-threatening emergency situations." One of the stated objectives is to "support efforts to have coordinated Emergency Medical Services (EMS) available to Morrison County residents within an average of ten minutes of their call for help."

8. In a letter dated October 27, 1993, the program director of the Central Minnesota EMS Council commented on the application considered herein as follows:

On October 21, 1993, the CMEMS Council Board of Directors voted unanimously to inform you and the Minnesota Department of Health EMS Section that the Central MN EMS Council highly encourages Murphy-Morrison County Ambulance Service to establish a substation in the Scandia Valley area with the financial assistance and volunteer support of the Scandia Valley First Response Team and Rail Prairie Township. Furthermore, the Board stated that they do not support encroachment of any primary service areas.

COMMENTS OF GOVERNING BODIES AND PUBLIC OFFICIALS

9. The Morrison County Sheriff, Paul M. Tschida, commented in support of the application herein. Sheriff Tschida states that because the Scandia Valley area is located some distance from the four area hospitals (Brainerd, Long Prairie, Staples, Little Falls), a quickly responding ambulance service

in the immediate area would be very beneficial for the survival of patients
in

need of emergency medical services. Marge Scudder Brchan, Director of the Morrison County Public Health Services, stated in a letter dated December 20, 1991, that:

The loss of Murphy's Satellite Ambulance Station in Randall, dramatically impacts timely intervention to the northwest corner of Morrison County. Therefore, the Public Health Services Advisory Board voted unanimously to support efforts to establish ambulance service to this area. The Board does request that all possible efforts be made to work collaboratively with other ambulance services.

The Morrison County Board of Commissioners adopted Resolution No. 2027 which "supports the efforts of the Scandia Valley First Response Team to establish an ambulance service for Scandia Valley and Rail Prairie Townships."

William

Block, Chairman of the Morrison County Board of Commissioners, and Ms. Scudder

Brchan refer specifically to the Morrison County Community Health Services

Plan which specifically seeks to "have coordinated emergency medical services

(EMS) available to Morrison County residents within an average of ten minutes

of the call for help."

10. Several hundred letters of support for the proposed ambulance service were submitted by residents in the proposed PSA and employers who strongly feel that a local ambulance provider would be very beneficial to the communities to be served. State Representative Steve Wenzel testified at the hearing and submitted written comments vigorously supporting the Applicant and proposed Application.

DELETERIOUS EFFECTS FROM DUPLICATION, OF AMBULANCE SERVICES

11. Murphy Morrison Ambulance presently provides ALS ambulance services

for all of Morrison County Including Scandia Valley and Rail Prairie Townships

in the northwest corner of the County which the Applicant proposes to serve as

its PSA. The record shows that during 1992 and through July of 1993, Murphy Morrison made 51 runs into the proposed PSA (35 in 1992 and 16 in the first half of 1993). There is nothing in the record to show what proportion of Murphy Morrison's total business runs into the proposed PSA are.

Additionally, there is nothing in the record to show what economic impact, in

terms of dollars and cents, the loss of runs in the proposed PSA would have on

Murphy Morrison-

12. Murphy Morrison Ambulance chose not to intervene as a party to oppose the application herein. Rather, they appeared and testified in opposition to the application. Murphy Morrison did not, however, offer any financial data to suggest that they would be adversely affected if the Application is granted.

ESTIMATED EFFECT ON THE PUBLIC HEALTH

13. The obvious and over-riding effect that granting the Application will have to the residents of Scandia Valley and Rail Prairie Townships is

that the response time for ambulance services will be cut by over half in most cases. People in need of medical services will be in route to a hospital much quicker if the ambulance is dispatched from the Scandia Valley Fire Department than if the ambulance comes from Little Falls. As a general rule, there will be less morbidity due to the earlier intervention of trained medical personnel. The Scandia Valley First Response Team will continue as first responders to emergency scenes and to assist the proposed ambulance service and any ambulance responding to mutual aid.

14. Although the Applicant plans to employ intercepts of ALS ambulance services if necessary, the proposed service will only offer BLS services at the scene rather than the ALS services now provided by the Murphy Morrison Ambulance Service.

15. At the present time, the Scandia Valley First Response Team operates with a medical director granted variance in the use of de-fibrillator capabilities and PTL (pharyngeal tracheal lumen). The Applicant will request that this variance be extended to the ambulance service if the Application is granted.

BENEFIT TO PUBLIC HEALTH VS. COST OF THE PROPOSED SERVICE

16. The Applicant asserts in its application that the average patient charge for an ambulance run in its proposed PSA will be \$320.00. Under the category of expenses in the application, the Applicant lists only an expense for estimated uncollectible accounts in the amount of \$1,600.00. The Applicant estimates that its annual income from operations will be \$20,800.00, and its annual non-operating revenue will be \$975.00. As of July 15, 1993, the ambulance fund checkbook showed funding in the amount of \$8,888.51; the first response checkbook showed funds specified for the ambulance service in the amount of \$1,307.85; the Lake Alexandria property owners had funds specified for the ambulance service in the amount of \$4,000.00; and money had been pledged for the ambulance service in the amount of \$1,195.00. These funds total \$15,391.36. In addition, 50 letters of support stated that if the ambulance is approved, donations would be forthcoming.

17. The Applicant stated that if the application is approved, it would purchase a Type II ambulance with all of the necessary equipment. The application does not, however, estimate any expenses for the items of insurance, medical supplies, gas, vehicle repairs, administrative or clerical, legal, or office expense and postage. Additionally, the Applicant assumes that all of its staffing and personnel will be on a volunteer basis only. Thus, no wage expense is contemplated.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Health have jurisdiction in this matter pursuant to Minn. Stat. 14.50 and 144.802. The Notice of Hearing was proper in all respects and all procedural and substantive requirements of law and rule have been fulfilled.

2. Minn. Stat., Minn. Stat. 144.802, subd. 3(g) provides:

The Administrative Law Judge shall review and comment upon the application and shall make written recommendations as to its disposition to the commissioner within 90 days of receiving notice of the application. In making the recommendations, the administrative law judge shall consider and make written comments as to whether the proposed service, change in base of operations, or expansion in primary service area is needed, based on consideration of the following factors:

- (1) the relationship of the proposed service . . . to the current community health plan as approved by the commissioner . . . ;
- (2) the recommendations or comments of the governing bodies of the counties and municipalities in which the service would be provided;
- (3) the deleterious effects on the public health from duplication, if any, of ambulance services that would result from granting the license;
- (4) the estimated effect of the proposed service . . . on the public health;
- (5) whether any benefit occurring to the public health would outweigh the costs associated with the proposed service . . .

The Administrative Law Judge shall recommend that the commissioner either grant or deny a license or recommend that a modified license be granted

3. The Application is both consistent with and supportive of the goals and objectives of the Morrison County Community Health Plan. The Central Minnesota EMS Council strongly supports an ambulance sub-station in Randall (reestablished by Murphy Morrison) due to the need for better access. However, the EMS Council does not support "encroachment of any primary service areas". The Judge concludes that the application is consistent with the stated objectives of the Central Minnesota EMS Council absent a decision by Murphy Morrison to reopen its station at Randall.

4. The Application has received the support of Morrison County officials, including the Sheriff and Director of Public Health Services.

5. The record in this matter does not support a conclusion that there would be any deleterious effects on the public health from the duplication of services in Morrison County. Murphy Morrison did not petition to intervene in this matter and did not supply any financial data to suggest that it would be adversely Affected by a new ambulance service in Scandia Valley and Rail Prairie Townships. The need for the proposed ambulance service arose solely

because Murphy Morrison determined to abandon its station at Randall which served the proposed PSA. Murphy Morrison's failure to participate as a party to this proceeding mitigates against the Applicant's burden to produce financial data concerning adverse effects to Murphy Morrison. See, In the Matter of Rochester Ambulance Service, 500 N.W.2d 495, 499 (Minn. App. 1993).

6. The proposed ambulance service will have a positive effect on the public health because much shorter response times will result with an ambulance service located in Scandia Valley Township. Although the proposed service will only offer BLS services, as compared to ALS services offered by Murphy Morrison, the quicker response time and sooner arrival at a hospital outweigh the lesser level of services.

7. The benefit occurring to the public health will likely outweigh any costs associated with the proposed new service. However, the Applicant has not provided detailed expense information concerning its start-up costs and continuing costs associated with an ambulance service. Although the Applicant will be a non-profit operation using volunteer staff, there still remains an over-head expense which has not been completely accounted for in the application.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Health GRANT the application of Scandia Valley Ambulance Service to provide BLS services to a PSA consisting of Scandia Valley and Rail Prairie Townships after the application is amended to show greater detail with respect to the costs of start-up and continuing costs of operation. The Applicant will have to show that it has committed revenues to enable it to cover costs and keep service charges at a reasonable level.

Dated this day of November, 1993.

PETER C. ERICKSON
Administrative Law Judge

NOTICE

Pursuant to Minn, Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped, no transcript prepared.

MEMORANDUM

The primary issue in this case is whether the abandonment of the Randall substation by Murphy Morrison creates a need for ambulance services in Scandia Valley and Rail Prairie Townships sufficient to meet the requirements of Minn. Stat. 144.802, subd. 3(g). Previous decisions of the Commissioner of Health, the Minnesota Court of Appeals and the Minnesota Supreme Court, have generally held that the duplication of ambulance services within a primary service area is contrary to the aforementioned statute due to the inelastic demand inherent in the ambulance business. See, In the Matter of the License Application of Rochester Ambulance Service Commissioner's Order dated September 30, 1992; Twin Ports Convalescent Inc, y. Minnesota State Board of Health , 257 N. W. 2d 343 (Minn . 1 977) ; North Memorial v. Department of Health 423 N. W. 2d 737 (Minn . App. 1 988) ; In the -Matter -of the License Application of Rochester Ambulance Service, 500 N.W.2d 495 (Minn. App. 1993). However, the case at hand is unique because it involves the withdrawal of local services in the corner of a PSA by a licensed provider creating a significantly longer response time for ambulance runs into the "abandoned" area. The Judge is not aware of any Minnesota decision which addresses a factual situation similar to the one presented herein.

The record in this matter shows that the average response time for ambulance runs by the current provider in 1993 is 25 minutes. This is the response time for ambulance runs from Little Falls into Scandia Valley and Rail Prairie Townships which is a distance of 20 or more miles. Prior to August of 1991, the current provider, Murphy Morrison, provided ambulance services to the two townships from Randall, approximately 10 miles away. Minn. Rule 4690.3400, subp. 3.C. states that the maximum allowable time for an ambulance run within a PSA is 30 minutes. Murphy Morrison's average is under 30 minutes, but nothing was offered into the record to show how many, if any, runs are longer than 30 minutes. However, there was testimony and written comments submitted suggesting that ambulance runs longer than 30 minutes were not uncommon, especially because the Murphy Morrison ambulance drivers were

not familiar with the roads and addresses in Scandia Valley and Rail Prairie Townships.

The case of Rochester Ambulance Service, supra, holds that the Applicant has the burden to discover and produce financial data to show that no deleterious effects will result to current providers in the proposed PSA if the Application is granted. However, in this case, the provider, Murphy Morrison, did not petition to intervene and although it chose to testify in opposition to the Application, did not come forward with any financial data to support a conclusion of adverse effects if the Application is granted. Indeed, Murphy Morrison did not even offer an explanation as to why it abandoned the Randall station. Because Murphy Morrison chose not to be a party to the proceeding, the normal routes of discovery were not available to the Applicant. Consequently, the Judge has concluded that the Applicant has met its burden.

The Findings and Conclusions above state clearly that the Applicant did not furnish sufficient financial information to show what the actual costs of the proposed new service will be. The anticipated revenues and expenses must be much more clearly set forth in the Application to enable the Commissioner to determine whether the proposed service can be maintained and keep service

charges at a reasonable level. Consequently, the Judge has recommended that the Application not be granted until further supplementary information is provided by the Applicant to show a true financial picture of the proposed ambulance service. However, the Judge has determined that "need" has been established for a quicker responding ambulance service in two townships of Morrison County where the average age of the residents is increasing and summer recreational population create inherent risks of injuries.

PCE